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April 28, 1992

Ms. Donna Searcy, Secretary  
Federal Communications Commission  
2025 M Street NW  
Washington, DC 20554

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APR 30 1992

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Re: Dry Prong Educational Broadcasting Foundation

APR 30 1992

Dear Ms. Searcy:

Federal Communications Commission  
Office of the Secretary

Please find enclosed original Opposition to "Motion for Summary Decision" and six copies in the captioned matter.

If you have any questions, please do not hesitate to call.

With kindest regards, I am

Very truly yours,

*A. Dale Smith*

A. Dale Smith

ADS/fes

cc: Honorable Edward J. Kuhlmann  
Administrative Law Judge  
2000 L Street NW  
Room 220  
Washington, DC 20554

Robert Zauner, Esq.  
Hearing Branch  
Federal Communications Commission  
2025 M Street NW  
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Washington, DC 20554

F. Joseph Brinig, Esq.  
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1818 N Street NW, Suite 200  
Washington, DC 20036

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APR 30 1992

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

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FILE

APR 30 1992

92-2

In re Applications of )  
 )  
 DRY PRONG EDUCATIONAL BROADCASTING )  
 FOUNDATION )  
 )  
 For Modification of Non-Commercial )  
 Station KVDP(FM), Dry Prong, LA )  
 )  
 MISSIONARY ACTION PROJECTS )  
 )  
 For Construction Permit for a New )  
 Non-Commercial FM Station on )  
 Channel 210 at Alexandria, LA )  
 )

FM Docket No. 92-2

File No. BPED-900305MF

File No. BPED-900905MK

TO: Honorable Edward J. Kuhlmann  
Administrative Law Judge

OPPOSITION TO "MOTION FOR SUMMARY DECISION"

Dry Prong Educational Broadcasting Foundation ("Dry Prong"), by its attorney, hereby respectfully opposes the "Motion for Summary Decision filed in this proceeding by Missionary Action Projects ("MAP") under date of April 17, 1992. In opposition thereto, it is alleged:

1. By Motion for Summary Decision filed in this proceeding under date of April 17, 1992, MAP seeks a summary decision that it has satisfied the requirements of Issue 1. That issue reads as follows: "To determine whether Missionary Action is qualified to be a noncommercial educational FM licensee".

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2. MAP's Motion is decidedly premature. As will be shown, depositions of the MAP principals are scheduled to take place in this proceeding on May 12, 1992. Thus, the MAP principals have yet to be deposed to determine the facts and circumstances surrounding MAP's eligibility. Moreover, MAP has not yet produced the documents in evidence which were required to be produced by the Memorandum Opinion and Order released by the Administrative Law Judge on March 24, 1992.

3. In Big Country Radio, Inc., 32 RR 2d 1119 (Rev. Bd. 1975), the Review Board set forth the standards for a successful motion for summary decision. The Review Board said:

"Section 1.251(d) of the Commission's rules provides, inter alia, that the Presiding Judge may grant a motion for summary decision only to the extent that 'there is no genuine issue as to any material fact. . . .' In making this determination, the Presiding Judge should carefully scrutinize the moving party's papers, while the opposing party's papers, if any, should be treated with considerable indulgence. Report and Order, Summary Decision Procedures, 34 FCC 2d 485, 488, 24 RR 2d 1715, 1718 (1972). Thus, summary decision should be granted only where the truth is clear, where the basic facts are undisputed, and the parties are not in disagreement regarding material factual interference that may be properly drawn from such facts. Sindermann v. Perry, 430 F. 2d 939 (5th Cir. 1970), affirmed 408 US 593 (1972); and Cole v. Chevron Chemical Company, Aronite Division, 427 F. 2d 390 (5th Cir. 1970)."

Big Country, at paragraph 3.

Thus, summary decision can only be issued where there is no genuine issue of fact to be explored at hearing.

4. By Memorandum Opinion and Order (FCC 92M-360) released in this proceeding on March 24, 1992, the Administrative Law Judge directed the parties to file an outline of all material evidence to be submitted at the hearing to support the issues and to exchange relevant documents regarding the issues. Dry Prong complied with that order. MAP did not. MAP filed an outline on March 30, 1992 but, in the last paragraph of that outline, MAP simply requested additional time in which to identify and produce documents. MAP said as follows:

"Attached hereto are preliminary materials which will be presented by MAP at the hearing to demonstrate its eligibility to hold a noncommercial FM license. Counsel for MAP misunderstood the oral instructions at the prehearing conference and informed MAP that its documents would not be required until May, 1992. Consequently, MAP was not informed of the presiding officer's orders until March 27, 1992 and would respectfully request that it be permitted additional time to identify additional documents which it will present to address the issues at hearing."

Thus, MAP has yet to comply with the document exchange directed by the Administrative Law Judge.

5. Furthermore, the MAP principals have been noticed for depositions and those depositions are to take place on May 12, 1992. At the depositions, the MAP principals will be extensively questioned concerning MAP's eligibility to be a licensee in the non-commercial FM broadcast service. Until the depositions of the MAP principals have been taken, there is no way of determining whether MAP can or cannot successfully support a motion for summary decision on Issue 1. That is so because the depositions may very

well reveal a factual situation different from that presented in the documents attached to MAP's motion. Moreover, the depositions may reveal new facts which are inconsistent with the factual situation presented in the documents attached to MAP's motion.

6. The motion is, therefore, premature. It should be denied. If, following the depositions, MAP wishes to refile its motion, it may do so. However, MAP should not be permitted to escape the crucible cross-examination through its premature motion.

April 24, 1992

Respectfully submitted,

DRY PRONG EDUCATIONAL  
BROADCASTING FOUNDATION

A. DALE SMITH & ASSOCIATES  
P.O. Box 826  
104 Morgan Street  
Ball, Louisiana 71405

By:

A handwritten signature in dark ink, appearing to read 'A. Dale Smith', written over a horizontal line.

A. Dale Smith  
Its Counsel

CERTIFICATE OF SERVICE

I, A. Dale Smith, hereby certify that on this 28th day of April, 1992 copies of the foregoing "Opposition to Motion for Summary Decision" were sent via first class mail, postage paid, to the following offices:

Judge Edward J. Kuhlmann  
Federal Communications Commission  
2000 L Street, Room 220  
Washington, DC 20554

Robert A. Zauner, Esq.  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
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Counsel for Missionary Action Projects

Date: April 28, 1992

A. Dale Smith  
A. Dale Smith